STATE OF NEW JERSEY
DEPARTMENT OF LAW PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS
DOCKET NO.

IN THE MATTER OF THE SUSPENSION OR REVOCATION OF THE LICENSE OF FRANCIS V. NATALE, D.C. TO PRACTICE CHIROPRACTIC IN THE STATE OF NEW JERSEY	Administrative Action FINAL ORDER

This matter was presented to the New Jersey State Board of Medical Examiners by way of Complaint filed April 10, 1984 by the Attorney General of New Jersey, by Michael S. Karpoff, Deputy Attorney General and subsequently by Peter A. Greene, Deputy Attorney General. Count I of the Complaint alleged that respondent, practicing at 139 Godwin Avenue, Midland Park, New Jersey 07432, had engaged in the practice of chiropractic in an unlawful manner, by misdiagnosing the condition of Mr. S.G., a 62-year old patient, and by inducing the patient to accept some 190 treatments over the course of 2 years for a condition not amenable to chiropractic care. He was alleged to have failed to maintain appropriate patient records documenting the necessity for treatment. Count II alleged the making of a false diagnosis of the patient's condition and treating for an unduly excessive number of times, and submitting a false report to the patient's insurance carrier and billing for $2,749 for said chiropractic care. Respondent, represented by Anthony F. LaBue, Esq., denied the charges.

The case was thereafter transmitted to the Office of Administrative Law for hearing before the Honorable M. Kathleen Duncan, A.L.J. Hearings were ultimately conducted on March 11 and 12, April 23 and 25, 1985, and an Initial Decision was issued August 29, 1985 recommending that respondent be found to have offered to treat and to have treated the condition of spinal misalignment in the absence of symptomatology, which was not in accordance with accepted standards of practice, and that he had engaged in what was described as gross overutilization and professional misconduct constituting violation of N.J.S.A. 45:1-21(c) and/or (d), and 45:1-21(e). The Administrative Law Judge urged that a "meaningful sanction" be imposed both as a deterrent and for the protection of the public. She recommended a suspension of license of one month and assessment of $200 fine. She denied Complainant's application for assessment of costs, in that no proof of costs had been submitted prior to the close of the fact-finding hearing.

We modify those recommendations and hereby find that respondent is guilty of misrepresentation and professional misconduct. Our reasoning is based essentially upon the findings of fact made by the Administrative Law Judge, which we generally affirm. It appears that the patient consulted respondent in early January 1980 after feeling a sharp pain in his back when lifting boxes. Respondent had the patient complete a history form entitled "Chiropractic Center Admittance Application." Respondent has testified that he performed a physical examination and range of motion tests, although the information contained on the patient records is exceedingly scanty and, as noted by the A.L.J., is for

the most part written in "respondent's particular brand of shorthand." A set of X-rays was taken. The patient testified at trial that he had been in extreme pain, but at no time did he lose any time from his employment as a bookbinder, a task requiring considerable activity and energy.

Notwithstanding this vocational status, over the next 9 months the patient was treated some 116 times on 105 days, sometimes receiving two and even three adjustments on the same day. Although the patient's condition improved steadily and within the first four months he was essentially pain-free, the patient was informed by respondent that his theory of chiropractic required extended treatment for a probable nine months even in the absence of any symptomatology. Respondent testified that:

> The idea behind an adjustment is to keep a person working and to keep them functional so, initially, the more visits that you make with a patient or the more adjustments you make with and depending on the person and type of injury and the complaints that he has, it is not unusual to see the patient more often so he can obtain relief faster, and you can get more control over his condition.

Respondent waited some five months before submitting his first bill to the insurance company (for an average fee of $12 per adjustment; not an unusual fee in 1980). Respondent claimed he was providing "treatment for lower back pain and neck stiffness, caused by spinal subluxations and complicated by right pelvic deficiency. Lumbar kyphosis and spinal scoliosis." It appears that the patient, without having been actually discharged by respondent, left the country for vacation and returned in December 1980 complaining of renewed pain. The patient thereafter received another entire year of chiropractic treatment, although, as before, he was essentially

pain-free after the first three months of 1981 when a second set of X-rays was taken.

Two experts testified on behalf of Complainant. William E. Litterer, D.C., testified that respondent's patient record failed to contain physical findings adequate to substantiate either objective findings or patient complaints; did not properly document the medical necessity for treatment, or document areas of treatment administered. His comments included the following observation. "If there is restricted range of motion, and that's one of the reasons we treat, they should be recorded so that a comparison can be made during the course of treatment to establish and identify whether the patient's responding or not." He reminded that if a patient is not responding within a reasonable length of time, comparative X-rays should be taken to determine whether something has been overlooked or there is a change in the patient's status or the patient should be referred to another health care practitioner. In the present case, respondent waited for some 15 months before taking new X-rays.

Dr. Litterer defined a subluxation as a misaligned vertebrae with an area of patient complaint related to the level and site of the misalignment. However, since the human body makes natural adaptations on its own, if there is no clinical complaint, even the area of apparent misalignment would not require treatment. Gerald R. Sternbach, D.C. also testified on behalf of Complainant. Dr. Sternbach recognized, as did Dr. Litterer, that a sprain/strain injury such as this patient apparently had would normally have resolved within a few months, and exceptional circumstances would have to be shown to warrant any further continuous chiropractic

care beyond that time. Both experts agreed that the frequency of the treatments recommended and administered by respondent was unique and inappropriate because there must be a period allowed for healing to take place. Dr. Sternbach noted:

> you treat an area and there must be time for tissue reactivity, time for the tissue to deal with effects of your treatment and the effect of the trauma and to constantly bombard the tissue with treatment does not serve a useful purpose and is not generally the standard which I would find customarily in my profession.

Neither expert was able to read much of the very limited material contained in respondent's patient records, and many of the visits failed to contain any notation regarding the purpose of the visit or the treatment performed - a deviation from acceptable standards. We find this a significant deficiency, as the basic purpose of patient records is to prepare a history of the patient's complaint, the professional examination and analysis or diagnosis, and plan of treatment and progress thereof. Such data is prepared not only for the benefit of the treating practitioner but primarily for the benefit of the patient. This is because the treating practitioner needs to be able to assess the development and progress (or lack thereof) made by the patient under the present regimen of care; a comprehensive retrospective assessment may need to be made. (In this regard, the A.L.J. noted unexplained disparities in respondent's reports to the insurance company including observations that were not substantiated in the records.) Further, a covering doctor may need to understand the records in order to treat the patient in respondent's absence; or the patient may wish to bring the records with him to a subsequent

practitioner. None of these responsibilities can be accomplished in the absence of adequate record.

Both of the State's experts agreed that the patient basically had degenerative joint disease; acute pain was caused initially by muscle spasm and sprain. The arthritic condition would not have been amenable to therapeutic chiropractic care, but only to some palliative treatment. But the muscle spasm did respond within the first month or two of treatment, as is typically found in chiropractic experience. The second course of treatment given to this patient commencing in December 1980 resulted from the exacerbation of the prior episode and again, typically, was resolved within the first few months. Neither of the experts could find any justification pursuant to the theory of chiropractic practice and community standards for the intensive as well as the extensive course of treatments administered by this respondent, which were found to be gross deviations from accepted standards.

Despite the inappropriateness of this patient management, the A.L.J. proposed, and we agree, that respondent's conduct was motivated by his belief that his theory of intensive as well as extended treatments would benefit the patient and that respondent was not motivated by greed or intent to defraud.

But we reject the A.L.J's conclusion that respondent had not attempted to treat a condition which was not amenable to treatment by chiropractic manipulation. He did attempt to so treat this patient, but it appears that he did so being insufficiently aware of the patient's actual physical condition. We are satisfied that the statements listed by respondent on the claim forms were not intended as a wilfull misrepresentation but rather, resulted from respondent's failure to recognize the extent of the patient's

degenerative joint condition, or his failure to recognize that it would not be amenable to chiropractic care. His failure to maintain appropriate patient records on a regular basis may have contributed to his failure to recognize that the initial acute sprain/strain had in fact resolved within the usual expected time (on both occasions). Although the A.L.J. accepted the testimony of respondent and of the patient that a more complete physical examination had been performed than was shown on the patient records, and we will accept that finding in the circumstances of this case, we remind respondent that a professional practice requires documentation of that data if treatment is to proceed in a responsible manner.

We are further concerned that respondent induced the patient to continue coming for treatment for spinal misalignment in the absence of symptomatology, which by definition is not the therapeutic practice of a health care profession. Respondent's continued treatments of this patient after the patient was pain-free cannot be properly characterized as some form of "maintenance treatment" serving as a preventive. The A.L.J. properly found that "at some point during the course of treatment ...it became no longer appropriate for respondent to continue to treat [Mr. G] and that point was established by both expert witnesses as the point when the patient became symptom free." After the problem has been initially resolved, subsequent care is appropriate when the patient experiences symptomatology which would be amenable to renewed chiropractic care. It was a misrepresentation for respondent to hold out to the public that he could provide genuinely therapeutic treatment over an extended span

of time when in fact there was nothing that he could actually "treat" in the absence of symptomatology. Similarly, it was inappropriate for him to fail to note in his record and in his reports to the third party payor when the "acute" condition actually resolved as this resulted in a misrepresentation of his patient's actual current status at any given time.

Respondent is young and appeared to be sincere, although misguided in his approach to his profession. The judge appropriately noted that in determining remedial and deterrent sanctions where a violation has taken place, a number of factors must be considered. She pointed out in particular:

> The nature of the violation or violations, the severity thereof, the number or frequency of the violations, the consequential or inconsequential effect of each violation and/or the cumulative effect of the violations if there are more than one, the violator's past record and performance, the likelihood of a recurrence of the violation, the competency or incompetency of the violator, and the protection of the public against irresponsible, dangerous or devastating health practices. ...

The A.L.J. suggested a very modest penalty in the belief that respondent had adequate professional training and that the patient was not harmed by the treatment and believed he had benefited. But we find that, by respondent's own testimony, the treatment he rendered to this patient was not an isolated incident but in fact was an expression of his fundamental philosophical approach to chiropractic - an approach which is at substantial variance with accepted standards of practice and which is unlikely to be of benefit to a patient. Unnecessary exposure to chiropractic adjustments is undesirable because the vigor of the treatment will not remedy the patient's underlying condition, and may actually

exacerbate it. Further, it may serve to delay the patient from receiving other forms of appropriate care. Finally, it continuously drains the finances of the patient or the third party payor without any real benefit attributable to the treatment. Respondent's failure to assess the extent and effect of this patient's actual condition is also of concern. We agree with the A.L.J. in concluding that respondent's exercise of his professional privileges in inducing the patient to submit to some 190 treatments, in the circumstances of this case, did constitute gross overutilization and professional misconduct warranting the imposition of a meaningful sanction both as a deterrent and for the protection of the public.

Complainant seeks reimbursement for the costs of this proceeding which included the investigation, expert consultation, the time of expert witnesses at trial, and the trial transcripts. We reject as irrevelant respondent's objection that they were not introduced at an earlier stage of this proceeding before the A.L.J. All such costs were properly documented and were submitted to this Board and to respondent for review prior to the final hearing conducted before this Board on October 9, 1985. The charges were necessary and were not the subject of dispute. They are hereby made a part of the record.

Taking into account all of the circumstances presented herein, including mitigation testimony by respondent, it is on this 25th day of October, 1985;

ORDERED that respondent's license to practice chiropractic in this State is hereby suspended for one year, the

first two months of which shall be an active suspension commencing January 1, 1986; and it is further

ORDERED that he is assessed costs of $3,672.37 and penalty of $1,000; and it is further

ORDERED that the terms of the attached document entitled "Future Activities of Medical Board Licensee Who Has Been Disciplined" are incorporated herein and made applicable to respondent during the period of active suspension of licensure.

Finally, upon the completion of the period of active suspension, respondent shall be required to appear before the Board or a committee thereof for the purpose of conducting a status conference.

This Order is effective upon entry.

NEW JERSEY STATE BOARD OF
MEDICAL EXAMINERS

BY: Edward W. Luka MD
Edward W. Luka, M.D.
President

FUTURE ACTIVITIES OF MEDICAL BOARD LICENSEE WHO HAS BEEN DISCIPLINED

a) A practitioner whose license is suspended or revoked or whose surrender of license with or without prejudice has been accepted by the Board:

1) Shall desist and refrain from the practice of the licensed profession in any form either as principal or employee of another.

2) Shall not occupy, share or use office space in which another licensee practices the profession.

3) Shall desist and refrain from furnishing professional services, giving an opinion as to the practice or its application, or any advice with relation thereto; or from holding himself or herself out to the public as being entitled to practice the profession or in any way assuming to be a practicing professional or assuming, using or advertising in relation thereto in any other language or in such a manner as to convey to the public the impression that such person is a legal practitioner or authorized to practice the licensed profession.

4) Shall not use any sign or advertise that such person, either alone or with any other person, has, owns, conducts or maintains a professional office or office of any kind for the practice of the profession or that such person is entitled to practice, and such person shall promptly remove any sign indicating ability to practice the profession.

5) Shall cease to use any stationery whereon such person's name appears as a professional in practice. If the practitioner was formerly authorized to issue written prescriptions of medication or treatment, such prescriptions shall be destroyed if the license was revoked; if the license was suspended, the prescriptions shall be stored in a secure location to prevent theft or any use whatever until issuance of a Board Order authorizing use by the practitioner. Similarly, medications possessed for office use shall be lawfully disposed of, transferred, or safeguarded.

6) Shall promptly notify by telephone or mail all patients who have been under such practitioner's care within the preceding six months of his inability to provide further professional services and shall advise said patients to seek health care services elsewhere. When a new professional is selected by a patient, the disciplined practitioner shall promptly deliver the existing medical record to the new professional, or to the patient if no new professional is selected by the patient, without waiving any right to compensation earned for prior services lawfully rendered.

7) Shall not share in any fee for professional services performed by any other professional following this suspension, revocation or surrender of license, but the practitioner may be compensated for the reasonable value of the services lawfully rendered and disbursements incurred on the patient's behalf, prior to the effective date of the suspension, revocation or surrender.

8) Shall promptly deliver to the Board the original license and current biennial registration and, if authorized to prescribe drugs, the current State and Federal Controlled Dangerous Substances registrations.

b) A practitioner whose license is surrendered, revoked, or actively suspended for one year or more:

1) Shall promptly require the publishers of any professional directory and any other professional list in which such licensee's name appears, to remove any listing indicating that the practitioner is a licensee of the New Jersey State Board of Medical Examiners in good standing.

2) Shall promptly require any and all telephone companies to remove the practitioner's listing in any telephone directory indicating that such practitioner is a practicing professional.

c) With respect to all Board licensees whose practice privileges are affected by sections (a) or (b) above, such practitioner:

1) Shall within 30 days after the effective date of the practitioner's suspension, revocation or surrender of license, file with the Secretary of the Board of Medical Examiners a detailed affidavit specifying by correlatively lettered and numbered paragraphs how such person has fully complied with this directive. The affidavit shall also set forth the residence or other address and telephone number to which communications may be directed to such person; any change in the residence address or telephone number shall be promptly reported to the Secretary.